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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,328	12/03/2003	John Kirchgeorg	05471.00016	5963

23294 7590 08/25/2006

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EXAMINER
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LAYNO, CARL HERNANDZ

ART UNIT	PAPER NUMBER
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3766

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/727,328

Applicant(s)

KIRCHGEORG ET AL.

Examiner

Carl H. Layno

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-18, 23, 24, 27, 30 and 33 is/are rejected.
- 7) ☒ Claim(s) 19-22, 25, 26, 28, 29, 31, 32 and 34-39 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 07272006.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Acknowledgment is made of applicant's amendment, which was received by the Office on July 17, 2006.

2. Claims 1-10 are canceled. Claim 11 has been amended. Claims 11-39 are active.

#### ***Specification***

3. In view of the applicant's modifications to the specification, the Examiner is withdrawing the objection, which was made against the specification in the last Office action.

#### ***Claim Objections***

4. Claims 33-35 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Specifically, claim 33-35 repeat what has already been stated in claims 27-29, respectively. In addition, these claims do not recite any additional positive structure to what is already present in claim 27-29.

#### ***Claim Rejections - 35 USC § 102***

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5. Upon further reconsideration of applicant's arguments and amendments to the claims, the Examiner is withdrawing the 35 U.S.C 102(b) rejection of Anderson '842, which was made against claims 11 and 13 in the last Office action.

***Claim Rejections - 35 USC § 103***

6. In view of the inapplicability of the Anderson '842 reference, the Examiner is also withdrawing the 35 U.S.C 103(a) rejection of Anderson '842 in view of Remes et al '841, which was made against claims 15 and 16 in the last Office action.

7. The following new rejection is being made in view of a newly discovered prior art reference.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 11-18, 23, 24, 27, 30, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiesmann et al (US 6,199,550) or Weismann (US 6,606,993) in view of Anderson (US 4,197,842).

The Wiesmann et al (US 6,199,550 and US 6,606,993) patents recite details of self-contained breathing apparatus' 10 (SCBAs), each having a bottled air supply 12 (Figs.1 and 2) and a physiologic pulse oximeter sensor 22 for measuring the oxygen saturation of a person's blood (Fig.4, col.5, lines 63+ of '993 and col.6, lines 1-26 of

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'550). Unlike applicant's device, Wiesmann et al's devices do not specify the use of oxygen or a "rigid unitary casing with a handle" for housing and transporting all of the components of their breathing systems.

The Anderson (US 4,197,842) patent, cited by the Examiner in the last Office action, describes a portable pulmonary respirator system (Fig.1) including a bottle of oxygen 10 and an oxygen gage 29 enclosed in a single unitary "suitcase-type carrying" case 9 (col.1, lines 60-61). Since the vast majority of suitcases have handles for single-hand pick up, the use of a handle or strap for carrying the case of Anderson would be inherent.

To have utilized a hand-held rigid carrying case for collecting and moving all of the pieces associated with the breathing apparatus' of Wiesmann et al would have been an obvious expedient to one of ordinary skill in the art in view of the teachings of Anderson '842, which already shows that breathing apparatus' may be transported in this manner and the disclosure in Wiesmann et al that . Lacking any criticality, the substitution of one breathable gas (oxygen) for another (air) in the bottle supply 12 of Wiesmann et al would also have been obvious, if not arbitrary selection, since both gasses are used for breathing.

In regard to claims 12, 23, and 25, the SCBA unit of Weismann et al includes a display having indicator lights within its mask for alerting the user when bottled air must be switched on and/or to indicate other emergency situations to the wearer and/or to indicate to the wearer the direction in which he/she is going (col.3, lines 11-23).

In regard to claims 17 and 18, applicant's attention is directed to col.5, lines 46-48 of Weismann et al '993.

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In regard to claims 27, 30, and 33, microprocessor **161** (Fig.5 of Weismann '993) performs the function of applicant's "control processor".

### *Allowable Subject Matter*

10. Claims 19-22, 25, 26, 28, 29, 31, 32, and 36-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Like Weismann et al, the Blue et al reference (S 2002/0195105 A1) describes an oxygen delivery system with an oximeter sensor **28** (Fig.2) for determining a user's blood oxygen content. Unfortunately, Blue et al fails to pre-date applicant's priority filing date, hence cannot be used as prior art. In addition, the reference fails to disclose a "rigid unitary casing with a handle" for housing and transporting all of its components.

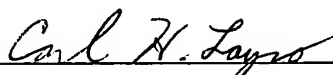
Other references teach the use of portable, single-handed, oxygen delivery systems (Moore – US 5,739,913, Smart – US 4,685,456, or Wickham et al -US 2004/0074495 A1), but fail to disclose a measurement system for measuring "at least one of a patient's blood or gas content, saturation, affinity, or perfusion", as claimed by the applicant. Of these references, only Wickham et al describes a unitary casing of the type claimed by the applicant. Unfortunately, the Wickham et al reference cannot be considered prior art due to its defective filing date.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CARL LAYNO  
PRIMARY EXAMINER

CHL  
8/22/2006